

In the Matter of License No. 227524 and all other Seaman Documents
Issued to: ANDREW J. KUZMIAK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1342

ANDREW J. KUZMIAK

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 1 November 1960, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as Second Mate on board the United States SS MONTEGO SEA under authority of the license above described, on 4 September 1960, Appellant assaulted and battered able seaman Nauman.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of three crew members including Nauman and an entry in the ship's Official Logbook.

In defense, Appellant testified that he was using a knife to peel a peach when he had words with Nauman and ordinary seaman Lewinsky; Appellant waved the knife and Nauman was accidentally cut when he raised his hand while in a sitting position.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents, issued to Appellant, for a period of twelve months outright plus twelve months on eighteen months' probation.

The decision was not served until 10 January 1962 when Appellant applied for a duplicate license.

FINDINGS OF FACT

On 4 September 1960, Appellant was serving as Second Mate on board the United States SS MONTEGO SEA and acting under authority

of his license while the ship was in the port of Bandar Shapur, Iran.

On the morning of this date, Appellant was very intoxicated. He held a small paring knife in one hand and was looking for able seaman Nauman. The latter was sitting on the deck talking with ordinary seaman Lewinsky when Appellant appeared and thrust the knife weakly at Nauman who grabbed the blade of the knife. Appellant released the knife and went to sleep in his room. Nauman suffered a small cut on his hand.

Appellant's prior record consists of suspensions in 1945 and 1953 as well as an admonition in 1947. The offenses found proved in 1953 include intoxication and assault.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was not responsible for his actions due to his extreme intoxication and also because of his mental condition at the time, as a result of which he was hospitalized for two months (2 December 1960 to 7 February 1961) and considered unfit for sea duty until October 1961.

The suspension is out of proportion to the offense and the testimony concerning Appellant's many good qualities as an officer was ignored by the Examiner.

If the order is affirmed, Appellant's license should be deemed to have been surrendered on the date he was hospitalized (2 December 1960) since he has not used it since this date and also because it was not Appellant's fault that the decision was not served on him until 10 January 1962.

APPEARANCE: Pierson and Pierson of Baltimore, Maryland
by Edward Pierson, of Counsel.

OPINION

Voluntary intoxication does not excuse a person from responsibility for his behavior. There have been no medical records submitted to show that Appellant was mentally irresponsible for his conduct on 4 September 1960.

The order will be affirmed because, although the injury was slight, Appellant was an officer on the ship and the facts as stated, based on the testimony of seaman Nauman and Letwinsky, indicate that Appellant had some intent to injure Nauman. This was a particularly serious offense for an officer and more than offset his good qualities when sober.

It will not be considered that Appellant deposited his license with the Coast Guard prior to 10 January 1962. Appellant did not know the outcome of the hearing, yet he made no attempt to obtain the Examiner's decision at any time after appearing at the hearing on 27 October 1960. The Examiner originally mailed the decision to Appellant's home address but he was at sea. A continuous attempt by the Coast Guard to locate Appellant and serve the decision failed because he was hospitalized before returning to this country.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 1 November 1960, is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D.C., this 17th day of September 1962.